



August 23, 2002

Mr. Tim Savoy
Public Information Officer
Schertz-Cibolo-Universal City Independent School District
1060 Elbel Road
Schertz, Texas 78154

OR2002-4708

Dear Mr. Savoy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167745.

The Schertz-Cibolo-Universal City Independent School District (the "district") received two requests for, among other items, access to tests and lesson plans for the "Students Having Individual Experiences in Leadership Development (SHIELD) and student leadership courses offered at Samuel Clemens High School. You state that the district released the requested lesson plans. You claim, however, that the requested tests are excepted from disclosure pursuant to section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the district did not submit any information to us regarding the remaining portions of the requests for information. We, therefore, presume that the district has already provided the requestor with this information to the extent that it exists. If not, the district must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Next, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code § 552.301(b).* In addition, a governmental body that receives a written request for information that it wishes to withhold from disclosure and that it considers to be within exceptions to disclosure must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general: written comments stating the reasons why the stated exceptions to

disclosure apply that would allow the information to be withheld; a copy of the written request for information; a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and a copy of the specific information requested or representative samples of the requested information if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e).

You state that you received the first request on May 29, 2002. Therefore, the district had until June 12, 2002 to request a decision from our office regarding the requested information. The district also had until June 19, 2002 to comply with section 552.301(e) of the Government Code. However, since the district did not request a decision from our office regarding the requested information or comply with section 552.301(e) until June 20, 2002, we conclude that the district failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e).

Because the district failed to comply with section 552.301 in requesting a decision from our office regarding the requested information, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The district must demonstrate a compelling interest to withhold the information in order to overcome this presumption. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Although the district raises sections 552.011, 552.122, and 552.223 of the Government Code as compelling reasons for withholding the requested information from disclosure, we note that section 552.122 does not constitute a compelling reason that is sufficient to overcome the presumption that the requested information is public. Furthermore, we note that sections 552.011 and 552.223 do not except information from disclosure. Accordingly, we conclude that the district may not withhold the information at issue from disclosure under sections 552.011, 552.122, or 552.223 of the Government Code. Consequently, the district must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

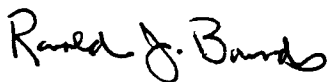
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 167745

Enc. Submitted documents

cc: Ms. Jane DuPlantis
3810 East FM 1518 North
St. Hedwig, Texas 78152
(w/o enclosures)